

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SETH HARRIS, ACTING SECRETARY OF  
LABOR, UNITED STATES DEPARTMENT  
OF LABOR,

No. CV 13-80059-MISC SI

**ORDER ENFORCING SUBPOENA  
DUCES TECUM**

Petitioner,

v.

RMRF ENTERPRISES, INC.,

Respondent.

On July 26, 2013, this Court heard argument on the petition to enforce a subpoena duces tecum issued to respondent RMRF Enterprises, Inc.

The subpoena seeks information in connection with a Department of Labor investigation regarding potential violations of ERISA, 29 U.S.C. § 1134(a)(1). The government states that at all relevant times, respondent RMRF was a fiduciary of the RMRF Enterprises, Inc. 401(K) Savings & Profit Sharing Plan, and that the subpoena seeks information about the plan and respondent's management of the plan. The subpoena was issued and served on respondent on October 10, 2012. Respondent, through counsel, negotiated several extensions of time to respond to the subpoena, eventually produced some but not all of the requested documents, and would not confirm to petitioner that it had produced all responsive documents. The government states that respondent failed to produce all documents relating to the plan's assets and investments, including but not limited to annual reports, investment statements, distribution statements plan account records and loan documents. Cushman Decl. ¶ 6.

Petitioner filed this action on March 21, 2013 seeking an order enforcing the subpoena.

1 Petitioner served the petition on respondent, and on May 10, 2013, the Court held a hearing on  
2 petitioner's request for an order to show cause why the subpoena should not be enforced. On May 14,  
3 2013, the Court issued an Order to Show Cause and scheduled a hearing on the matter for June 27, 2013.  
4 After petitioner failed to serve respondent with a copy of the Order to Show Cause, the Court continued  
5 the hearing to July 26, 2013. The record reflects that petitioner served respondent with the Order to  
6 Show Cause, notice of the July 26, 2013 hearing, and other documents in this case. Respondent has  
7 made no appearance in this action, and did not appear at the July 26, 2013 hearing.

8 The scope of judicial review in an administrative subpoena enforcement proceeding is "quite  
9 narrow." *EEOC v. Children's Hosp. Med. Ctr. of N. Cal.*, 719 F.2d 1426, 1428 (9th Cir. 1983) (en  
10 banc), *overruled on other grounds as recognized in Prudential Ins. Co. of Am. v. Lai*, 42 F.3d 1299 (9th  
11 Cir.1994). "The critical questions are: (1) whether Congress has granted the authority to investigate;  
12 (2) whether procedural requirements have been followed; and (3) whether the evidence is relevant and  
13 material to the investigation." *Id.* Once the government has demonstrated these three factors, the Court  
14 should enforce the subpoena "unless the party being investigated proves the inquiry is unreasonable  
15 because it is overbroad or unduly burdensome." *Id.*

16 The Court concludes that the government has established these three factors and that the  
17 subpoena should be enforced. Respondent has made no appearance, and thus there is no showing that  
18 the subpoena is overbroad or unduly burdensome. Accordingly, the Court GRANTS the petition to  
19 enforce the administrative subpoena. Respondent is ORDERED to produce all responsive documents  
20 in his possession, custody or control on or before August 16, 2013.

21 The Clerk shall close the file. This Court retains jurisdiction to further enforce its Orders  
22 subpoena as may become necessary.

23  
24 **IT IS SO ORDERED.**

25  
26 Dated: July 30, 2013

27   
28 SUSAN ILLSTON  
United States District Judge